



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,253	06/05/2006	Peter Dahmen	CS8726/BCS033050	7823

34469 7590 01/04/2010
BAYER CROPSCIENCE LP
Patent Department
2 T.W. ALEXANDER DRIVE
RESEARCH TRIANGLE PARK, NC 27709

EXAMINER

PAK, JOHN D

ART UNIT	PAPER NUMBER
----------	--------------

1616

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

01/04/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

blair.wilson@bayercropscience.com
pamula.ramsey@bayercropscience.com
rebecca.hayes@bayercropscience.com

Office Action Summary	Application No. 10/565,253	Applicant(s) DAHMEN ET AL.	
	Examiner John Pak	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 6-9 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 1616

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the carboxamide (b)(1), (b)(8) and (b)(9).

Group II, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the strobilurins (b)(2).

Group III, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the triazoles (b)(3).

Group IV, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the phenylurea (b)(4).

Group V, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the chlorophthalide (b)(5).

Group VI, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the hydrazine (b)(6).

Group VII, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the benzothiazole (b)(7).

Group VIII, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the quinolone (b)(10).

Group IX, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the dithiolane (b)(11).

Group X, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the phosphorus compound (b)(12).

Group XI, claims 6-9, drawn to a fungicidal composition and method wherein compound of formula I is combined with the iminoglycine (b)(13).

For invention groups such as I, II and III, wherein the second (b) component encompasses more than one specific compound, applicant is further required for examination purposes a single disclosed species.

The inventions listed as Groups I to XI do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons.

Under lack of unity rules, unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding special technical features. The expression “special technical features” is defined as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art. The “contribution over the prior art” is considered with respect to novelty and inventive step. Further, under Markush practice, all alternatives must have a common property AND (i) common structure must be present in all alternatives or (ii) all alternatives must belong to a recognized class of chemical compounds. See PCT Rule 13.1 and 13.2; see also MPEP 1850.

Here, both the compound of formula (I) and all of the structurally diverse (b) component compounds are known pesticidal ingredients. The special technical feature that is common to all the inventions is the compound of formula (I), but since that compound is a known pesticide, there is no special technical feature that defines a contribution over the prior art.

In addition to lack of unity, search and examination of more than one invention would place an undue burden on the Examiner. The (b) component compounds are structurally diverse and there is no good way to effectively search and examine more than one invention. A search for any one invention could not be used as a reasonable search of any of the other inventions. Under the facts of this application, the additional search and consideration would rise to the level that would be undue because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention and single disclosed species (for Groups I, II or III) to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Johann Richter, can be reached on **(571)272-0646**.

Art Unit: 1616

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John Pak/
Primary Examiner, Art Unit 1616